

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,  
- against -

JOHN PATRICK GORMAN III,

Defendant.

USDC SDNY  
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21 Civ. 870 (VM)

ORDER

**VICTOR MARRERO, United States District Judge.**

On May 21, 2021, and consistent with the Court's Individual Practices, defendant John Patrick Gorman III ("Gorman"), sent counsel for plaintiff Commodity Futures Trading Commission ("CFTC") a pre-motion letter identifying alleged deficiencies in the Complaint that the CFTC filed in this action, and that allegedly would provide a basis supporting a motion to dismiss. (See Dkt. No. 14.) On June 3, 2021, also consistent with the Court's Individual Practices, the CFTC sent a three-page letter in response, opposing the grounds that Gorman stated in favor of the proposed motion. (See Dkt. No. 16.) On June 16, 2021, Gorman filed a letter asserting that the parties' letter exchange did not resolve the dispute and thus failed to avoid motion practice at this stage of the proceedings. (See Dkt. No. 17.)

On February 28, 2022, the Court issued a Decision and Order construing the parties' pre-motion letter exchange as briefing

on a motion to dismiss, and the Court denied Gorman's motion to dismiss. (See Dkt. No. 20.) Gorman subsequently filed a motion for reconsideration on the grounds that he was not allowed to file a full motion to dismiss. (See Dkt. No. 24.) Separately, the CFTC requested reconsideration of the elements the Court found necessary to establish liability under CFTC Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1) and (3). (See Dkt. No. 26.)

In light of recent Second Circuit opinions, the Court finds that reconsideration is warranted to permit Gorman to file a full motion to dismiss. At the conclusion of the parties' briefing on Gorman's proposed motion, the Court will determine whether dismissal is warranted, and whether to modify the Court's prior Decision and Order regarding the elements necessary to establish liability under CFTC Regulation 180.1(a)(1) and (3). The parties are directed to provide the Court with a proposed briefing schedule by August 17, 2022.

**SO ORDERED.**

Dated: August 11, 2022  
New York, New York



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VICTOR MARRERO  
U.S.D.J.